

**PRODUCT:** 89 44-pound boxes of Greek cheese at Chicago, Ill.

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of filthy and decomposed substances by reason of the presence of maggots, mites, and mold.

**DISPOSITION:** December 11, 1944. The Deligiannis Bros., Chicago, Ill., claimant, having admitted the facts in the libel, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

**7782. Adulteration and misbranding of Cheddar cheese. U. S. v. 22 Boxes of Cheddar Cheese. Consent decree of condemnation. Product ordered released under bond.** (F. D. C. No. 13185. Sample Nos. 62920-F, 89944-F.)

**LIBEL FILED:** On or about August 12, 1944, Western District of Missouri.

**ALLEGED SHIPMENT:** On or about April 18, 1944, by the Pet Milk Co., from Huntsville, Ark.

**PRODUCT:** 22 boxes of Cheddar cheese at Springfield, Mo.

**VIOLATIONS CHARGED:** Adulteration, Section 402 (b) (1), a valuable constituent, milk fat, had been in part omitted from the product; and, Section 402 (b) (2), an article deficient in milk fat had been substituted in whole or in part for Cheddar cheese, which it purported and was represented to be.

Misbranding, Section 403 (e) (1), the product failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor; and, Section 403 (g) (1), it failed to conform to the definition and standard of identity for Cheddar cheese since it contained in its solids less than 50 percent of milk fat.

**DISPOSITION:** September 30, 1944. The Pet Milk Co., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond, conditioned that it be brought into compliance with the law, under the supervision of the Food and Drug Administration.

## EGGS

**7783. Adulteration of dried whole eggs. U. S. v. 284 Barrels of Dried Eggs. Tried to the court. Decree of condemnation ordering product delivered to a public institution, for use as animal feed.** (F. D. C. No. 9060. Sample Nos. 5843-F, 5844-F.)

**LIBEL FILED:** December 23, 1942, Western District of Tennessee.

**ALLEGED SHIPMENT:** On or about October 29 and November 4, 1942, by the F. S. C. C., c/o Joe Lowe Corporation, San Antonio, Tex.

**PRODUCT:** 284 175-pound barrels of dried whole eggs at Memphis, Tenn.

**LABEL, IN PART:** "Spray Dried Whole Egg Joe Lowe Corp. New York N Y Mfg. by Joe Lowe Corp San Antonio Texas."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a decomposed substance.

**DISPOSITION:** The Joe Lowe Corporation filed an answer on February 18, 1942, denying that the product was adulterated, and the cause having been heard before the court without a jury, the following findings of fact and conclusions of law in favor of the Government were handed down on July 29, 1943:

*Boyd, District Judge:*

## FINDINGS OF FACT

### I

"The United States Government, through libel proceedings, seized two hundred and eighty-four barrels of dried eggs at Memphis, Tennessee. The question, purely one of fact, is whether or not they are adulterated within the meaning of the Federal Food, Drug and Cosmetic Act (Title 21 United States Code Annotated, Section 342 (a) (3)), and more particularly whether they consist wholly or in part of a decomposed substance.

### II

"These eggs, the property of claimant Joe Lowe Corporation, were processed at claimant's plant in San Antonio, Texas.

## III

"Samples were taken at San Antonio, Texas, and at Memphis, Tennessee, for analysis in Government laboratories and by experts in the employ of the claimant herein.

## IV

"The United States Government, through its Food and Drug Administration, made numerous tests and experiments to arrive at a basis for standards in the matter of judging dried eggs and detecting decomposition therein. Thus, it was determined that in good, edible, liquid eggs, and in dried eggs made therefrom, the microscopic bacterial count is relatively low; while in eggs which are allowed to undergo souring before drying, such counts greatly increase. Also, it was determined that the amounts of lactic and acetic acids in dried whole eggs made from good, edible liquid eggs are relatively small, with no formic acid; while in eggs which are allowed to undergo souring before drying the amounts of lactic and acetic acids are significantly greater, and substantial amounts of formic acid are found in the dried egg powder made therefrom.

## V

"From the tests and experiments set out above, it was determined that a sour egg is one which has undergone bacterial deterioration.

## VI

"From the tests and experiments made by the Food and Drug Administration aforesaid, it was found that lactic acid in good eggs never exceeds fifty milligrams per one hundred grams of dried eggs. It was also found that acetic acid in good eggs never exceeds sixty-five milligrams per one hundred grams of dried eggs. Further, that formic acid is not found at all in good eggs.

## VII

"From the tests and experiments made by the Food and Drug Administration, it was determined that dried eggs containing more than one hundred million bacteria per gram are sour and contain decomposed substance. It was also established that as a general rule as the bacterial microscopic count increases, there is a corresponding increase in the amount of acid present.

## VIII

"As a result of the microscopic bacteriological count on samples of the dried eggs in this case, it is found that the eggs contain from one hundred and twenty-two million bacteria per gram to a maximum of four billion, six hundred and ten million bacteria per gram.

## IX

"As a result of the chemical analysis of the samples of the dried eggs in this case, it is found that they contain in formic acid from twenty-seven milligrams per one hundred grams to a maximum of one hundred and seven milligrams per one hundred grams; that they contain from sixty-one to one hundred and forty-six milligrams per one hundred grams of acetic acid; and that they contain from eighty-six to six hundred and two milligrams per one hundred grams of lactic acid.

## X

"The tests relating to the sense of taste and smell, referred to as the organoleptic test, to which the eggs in this case were subjected, establish that the eggs under investigation herein are repulsive and a sour, decomposed product.

## XI

"The practices and conditions under which the eggs involved herein were processed were not conducive to the production of a good, wholesome and edible product, but were such that sour or decomposed eggs could be reasonably expected to result. In this connection, eggs, including those under inves-

tigation here, on being broken were accumulated and permitted to remain in the breaking room at high temperatures for unreasonable lengths of time before refrigeration. The proof shows also that frozen eggs, from which the eggs in this case were dried, were taken from a warehouse lot which contained a substantial quantity of sour, decomposed eggs.

## XII

"From all of the tests made in this case, and from all the facts and circumstances, the Court finds the eggs herein to be sour and, therefore, to contain a decomposed substance, which renders them unfit for food in any manner.

## CONCLUSIONS OF LAW

### I

"The eggs herein are adulterated within the meaning of the Federal Food, Drug and Cosmetic Act (Title 21 United States Code Annotated, Section 342 (a) (3)), in that same consist wholly or in part of a decomposed substance rendering them unfit for food in any manner.

### II

"The United States of America is entitled to a decree of condemnation as prayed, with costs."

On August 7, 1943, a decree was entered condemning the product and ordering it destroyed. A notice of appeal to the Circuit Court of Appeals for the Sixth Circuit was filed by the claimant on September 7, 1943. On May 27, 1944, the claimant, alleging that it had not perfected its appeal and that the matter thus still remained within the jurisdiction of the district court, filed a petition in the district court for the segregation and release under bond of any fit portion of the product to the claimant. The claimant also submitted a motion to the circuit court of appeals to dismiss the appeal, and on June 13, 1944, the Government having consented to the dismissal, the circuit court ordered the appeal dismissed and the cause remanded to the district court. On June 19, 1944, the claimant's petition for release of any fit portion of the product was denied, and on November 2, 1944, an amendment to the original decree of condemnation was filed, ordering that the product be delivered to a public institution, for use as animal feed.

**7784. Adulteration of dried whole eggs. U. S. v. The Blue Sea Fish Co., Inc., Walter Ebbighausen, and Arthur Barretta. Pleas of guilty. Corporation fined \$250, and individual defendants each fined \$500. (F. D. C. No. 12536. Sample No. 66196-F.)**

**INFORMATION FILED:** August 7, 1944, District of New Jersey, against the Blue Sea Fish Co., Inc., a corporation, Teaneck, N. J., and Walter Ebbighausen and Arthur Barretta, president and secretary-treasurer, respectively.

**ALLEGED SHIPMENT:** Between the approximate dates of June 21 and July 6, 1943, from the State of New Jersey into the State of New York.

**LABEL, IN PART:** "Egg Grade A \* \* \* Advance Foods Corp. Centerville Ind.," or "Spray Whole Egg \* \* \* Marshall Kirby & Co Inc Terre Haute Ind."

**VIOLATION CHARGED:** Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hair fragments, vegetable fibers, pieces of wood, cinders, and dirt.

**DISPOSITION:** December 15, 1944. Pleas of guilty having been entered on behalf of the corporation and by the individual defendants, fines of \$250 against the corporation and \$500 against each individual defendant were imposed.

**7785. Adulteration of spray-dried whole eggs. U. S. v. 18 Barrels of Spray-Dried Whole Eggs. Default decree of condemnation and destruction. (F. D. C. No. 14772. Sample Nos. 92366-F, 92367-F.)**

**LIBEL FILED:** December 15, 1944, Western District of New York; amended libel filed December 23, 1944.

**ALLEGED SHIPMENT:** On or about March 22 and 25, 1944, by Horace A. Gioia, from Jersey City, N. J.